Reg. No. K. 172

© Government of Kerala
1974

KERALA GAZETTE
EXTRAORDINARY
PUBLISHED BY AUTHORITY

Vol. XIX] Trivandrum, Saturday, 5th October 1974 / 13th Asvina 1896 [No. 697

SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 10564/LA4A/74. *Dated, Trivandrum, 5th October, 1974.*

The Travancore-Cochin Hindu Religious Institutions (Amendment) Bill, 1974 together with the Statement of Objects and Reasons and the Financial Memorandum is published under Rule 67 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

Dr. R. PRASANNAN,
Secretary,
Legislative Assembly.

PRINTED AND PUBLISHED BY THE S.G.P. AT THE GOVERNMENT PRESS,
TRIVANDRUM 1974.

33/3129/MC.

Fourth Kerala Legislative Assembly
Bill No. 195

THE TRAVANCORE-COCHIN HINDU RELIGIOUS INSTITUTIONS (AMENDMENT) BILL, 1974

A

BILL

further to amend the Travancore-Cochin Hindu Religious Institutions Act, 1950.

Preamble.—WHEREAS it is expedient further to amend the Travancore-Cochin Hindu Religious Institutions Act, 1950, for the purposes hereinafter appearing;

BE it enacted in the Twenty-fifth Year of the Republic of India as follows:—

1. *Short title.*—This Act may be called the Travancore-Cochin Hindu Religious Institutions (Amendment) Act, 1974.

2. *Amendment of section 4.*—For sub-section (1) of section 4 of the Travancore-Cochin Hindu Religious Institutions Act, 1950 (XV of 1950) (hereinafter referred to as the principal Act), the following sub-section shall be substituted, namely:—

"(1) The Board referred to in section 3 shall consist of three Hindu members, two of whom shall be nominated by the Hindus among the Council of Ministers and one elected by the Hindus among the members of the Legislative Assembly of the State of Kerala.".

3. *Substitution of new section for section 11.*—For section 11 of the principal Act, the following section shall be substituted, namely:—

"11. *President of the Board.*—The Hindus among the Council of Ministers shall nominate one of the members of the Board as its President.".

4. *Amendment of section 33.*—In section 33 of the principal Act, for the words "the Ruler of Travancore" and "the Ruler", in both the places where they occur, the words "the Government" shall be substituted.

5. *Substitution of new section for section 63.*—For section 63 of the principal Act, the following section shall be substituted, namely:—

"63. *Constitution of the Cochin Devaswom Board.*—The Board referred to in sub-section (1) of section 62 shall consist of

three Hindu members, two of whom shall be nominated by the Hindus among the Council of Ministers and one elected by the Hindus among the members of the Legislative Assembly of the State of Kerala.".

6. *Amendment of section 71.*—For sub-section (1) of section 71 of the principal Act, the following sub-section shall be substituted, namely:—

"(1) The Hindus among the Council of Ministers shall nominate one of the members of the Board as its President.".

7. *Amendment of section 107.*—In section 107 of the principal Act, in sub-sections (1) and (2), for the words "the Ruler of Cochin" and "the Ruler", in both the places where they occur, the words "the Government" shall be substituted.

8. *Repeal and saving.*—(1) The Travancore-Cochin Hindu Religious Institutions (Amendment) Ordinance, 1974 (12 of 1974), is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act as if this Act had come into force on the 26th day of August, 1974.

STATEMENT OF OBJECTS AND REASONS

Section 4 of the Travancore-Cochin Hindu Religious Institutions Act, 1950, relating to the constitution of the Travancore Devaswom Board provides that one of the three members of the Board shall be nominated by the Ruler of Travancore. Section 11 of the Act provides that in case of equality of votes at a meeting of the members of the Board held for electing one of them as President, the Ruler of Travancore may nominate one of the members as its President. Sections 63 and 71 of the Act relating to the Cochin Devaswom Board vests similar powers in the Ruler of Cochin. Those provisions have been included in the Act in pursuance of the powers and privileges guaranteed by the covenant executed by the Rulers and the Government of India.

2. By the Constitution (Twenty-sixth Amendment) Act, 1971, article 291 (relating to privy purses) and article 362 (rights and privileges of Indian Rulers) have been omitted and article 363A (withdrawal of recognition granted to Rulers of Indian States) has been incorporated in the Constitution. According to

clause (a) of article 363A, the Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was recognised by the President as the Ruler of an Indian State or any person who, at any time before such commencement, was recognised by the President as the successor of such Ruler, shall, on and from such commencement, cease to be recognised as such Ruler or the successor of such Ruler. The powers and privileges vested in the Rulers of Travancore and Cochin under the covenant and the Travancore-Cochin Hindu Religious Institutions Act are by virtue of their position as Rulers. Since their status as Rulers have now been abolished by article 363A of the Constitution, there is no justification for retaining those powers and privileges. It is therefore considered necessary to divest the Ruler of Travancore and the Ruler of Cochin of their powers to nominate a member and the President to the Travancore Devaswom Board and the Cochin Devaswom Board respectively. It is also considered that the powers exercised by the former Rulers should be vested in the Hindus among the Council of Ministers and that the President of each Board should be nominated by the Hindus among the Council of Ministers.

3. Sections 33 and 107 of the Act contain provisions requiring the Devaswom Boards to submit copies of the budgets and the annual administration reports of the working of the Boards to the Rulers. It is considered unnecessary to retain these provisions. Provision is however proposed to be made for the submission of the above records to the Government instead of to the Rulers.

4. The terms of office of the members nominated by the Rulers were due to expire on 2-9-1974. In order to make the nomination of the members to the Boards on the basis of the provisions proposed, it was necessary to amend the Travancore-Cochin Hindu Religious Institutions Act immediately. As the Legislative Assembly was not in session, the amendments were made by the promulgation of the Travancore-Cochin Hindu Religious Institutions (Amendment) Ordinance, 1974 (12 of 1974). The Bill seeks to replace the Ordinance by an Act of the Legislature.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any expenditure from the Consolidated Fund of the State.

V. EACHARAN.

Reg. No. K. 107.

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XIX] Trivandrum, Saturday, 5th October 1974 / 13th Asvina 1896 [No. 699

GOVERNMENT OF KERALA

Law Department

NOTIFICATION

No. 14801/B2/74/Law. *Dated, Trivandrum, 5th October 1974.*

The following Act of Parliament, published in a Gazette of India Extraordinary, Part II—Section 1, dated the 1st September, 1974, is hereby republished for general information. The Bill as passed by the Houses of Parliament received the assent of the President on the 1st September, 1974.

By order of the Governor,

M. Sekharan,

Law Secretary.

PRINTED AND PUBLISHED BY THE S. G. P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1974.

33/3132/MC.

THE ADDITIONAL EMOLUMENTS (COMPULSORY DEPOSIT) ACT, 1974

No. 37 of 1974

An Act to provide, in the interests of national economic development, for the compulsory deposit of additional emoluments and for the framing of a scheme in relation thereto, and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows:—

CHAPTER I

Preliminary

1. *Short title, extent and commencement.*—(1) This Act may be called the Additional Emoluments (Compulsory Deposit) Act, 1974.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 6th day of July, 1974, except section 14 which shall come into force at once.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "appointed day" means the 6th day of July, 1974;

(b) "additional dearness allowance" means such dearness allowance as may be sanctioned from time to time, after the appointed day, over and above the amount of dearness allowance payable in accordance with the rate in force immediately before the date from which such sanction of additional dearness allowance is to take effect.

Explanation I.—Where payment of dearness allowance is linked to a cost of living index or any other factor, any automatic payment, after the appointed day, of dearness allowance in consequence of any rise in such cost of living index or in consequence of any change in such other factor shall, notwithstanding the provisions of this clause, be deemed to be the additional dearness allowance.

Explanation II.—For the purpose of computation of the additional dearness allowance in relation to an employee who enters into any post after the appointed day, dearness allowance payable, immediately before the appointed day, in relation to such post shall be deemed to be the dearness allowance

payable to such employee as if he were holding that post on the appointed day and any excess over and above the said dearness allowance shall be deemed, for the purposes of this Act, to be the additional dearness allowance in relation to such employee;

(c) "additional wages" means such wages, over and above the wages payable to an employee in accordance with the rates in force immediately before the appointed day, as may become payable to the employee in respect of any period after the appointed day in pursuance of any wage revision, whether by or under an agreement or settlement between the parties or any award, decree or order of any court, tribunal or other authority or otherwise, but does not include—

(i) any increment due to the employee in accordance with the time scale of pay applicable to the post held by him immediately before the appointed day, and any consequent increase in any allowance (not being dearness allowance) admissible under any rule or order in force immediately before the appointed day;

(ii) any higher wages payable to the employee on his—

(a) promotion to a higher post and any increment, being an increment within the prescribed limits, due to the employee in such higher post;

(b) deputation or transfer to an equivalent post or to any post involving higher responsibilities and duties;

(iii) any special pay, honorarium, fee or reward payable for any special work done;

(iv) any remuneration payable for overtime work;

(v) any increase in wages consequent on the revision of the minimum rates of wages fixed under the Minimum Wages Act, 1948 (11 of 1948);

(vi) any increase in wages sanctioned in pursuance of the recommendations made—

(a) by the Third Central Pay Commission;

(b) before the appointed day, by any Pay Commission appointed by a State Government, in relation to the employees of that Government;

(c) by any committee constituted, before the appointed day, by Parliament, Supreme Court or any High Court in relation to any employee of Parliament, Supreme Court or High Court, as the case may be.

Explanation I.—Where any wage revision made after the appointed day is to be effective from a date prior to the appointed day, the wages payable immediately before the appointed day, before such wage revision, shall, for the purposes of computation of additional wages, be deemed to be the wages.

Explanation II.—Any bonus (including incentive and production bonus) paid after the appointed day at a rate over and above the rate at which it was last paid before the appointed day, shall be deemed for the purposes of this Act, to be additional wages;

(d) "bank deposit rate" means the highest of the maximum rates at which interest may be paid on different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions) by different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949 (10 of 1949);

(e) "dearness allowance" means all cash payments, by whatever name called, made to an employee on account of rise in the cost of living;

(f) "Deposit Account" means an account opened and maintained under section 5;

(g) "emoluments" includes wages and dearness allowance;

(h) "employer" means,—

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, and where a person is named as manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948) the person so named;

(ii) in relation to an establishment belonging to or under the control of the Central Government or a State Government, the person or authority appointed by the appropriate Government for the supervision and control of the employees, or where no person has been so appointed, the head of the Department concerned;

(iii) in relation to an establishment belonging to or under the control of any local authority, the person appointed by such authority for the supervision and control of the employees, or where no person has been so appointed, the Chief Executive Officer of the local authority;

(iv) in any other case, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person;

and includes, in the case of a deceased employer, the legal representative of such deceased employer;

(i) "local authority" means any municipal committee, district board, body of port commissioners, panchayat or other authority legally entitled to, or entrusted by the Central or any State Government with the control or management of any municipal or local fund;

(j) "nominated authority" means such authority as may be nominated by the Central Government for the purposes of this Act and different authorities may be nominated for different purposes;

(k) "notification" means a notification published in the Official Gazette;

(l) "prescribed" means prescribed by rules made under this Act;

(m) "scheme" means a scheme framed under this Act;

(n) "specified authority" means the authority specified under sub-section (1) of section 5;

(o) "wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed, or capable of being expressed, in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes—

(i) any remuneration payable under any agreement, or settlement between the parties or any award, decree or order of any court, tribunal or other authority;

(ii) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(iii) any additional remuneration payable under the terms of employment, including bonus, whether under a scheme of profit sharing or otherwise;

(iv) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

(v) any allowance paid for house accommodation, or where house accommodation is provided, the value of such accommodation, and the value of electricity or water, or both, supplied, and the value of medical attendance or other amenity,

but does not include—

(1) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(2) any travelling or running allowance or the value of any travelling concession;

(3) any sum, not exceeding rupees two hundred and fifty per annum, paid to the employed person to defray special expenses entailed on him by the nature of his employment;

(4) any compensation or gratuity payable on the termination of employment;

(5) any dearness allowance.

3. *Persons to whom this Act applies.*—This Act shall apply to an employee of—

(a) the Central or State Government;

(b) a local authority;

(c) a company as defined in section 3 of the Companies Act, 1956, (1 of 1956) including a foreign company within the meaning of section 591 of the Companies Act, 1956, and a Government company as defined in section 617 of that Act;

(d) any other corporation, including a society or body established by, or registered under, a Central, Provincial or State Act;

(e) any individual, association of persons or body of individuals, partnership firm or Hindu undivided family required by the Income-tax Act, 1961, (43 of 1961) to deduct income-tax at source from the emoluments paid to their employees;

(f) any establishment owned or maintained in India by a trust, fund or institution established for a charitable or religious purpose, and required by the Income-tax Act, 1961, (43 of 1961) to duduct income-tax at source from the emoluments paid to their employees;

(g) any establishment, not being an establishment owned by Government, local authority or person specified, respectively, in clauses (a) to (f) (both inclusive), to which the provisions of any law relating to Provident Funds (other than those established under the Public Provident Fund Act, 1968) (23 of 1968) apply;

(h) any other establishment, not being an establishment to which any of the foregoing clauses apply, established at the instance, or in pursuance of a resolution, of the Central or State Government or wholly or substantially financed by the Central or State Government.

Explanation.—Where any grant or loan to an establishment from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly in a financial year is not less than rupees five lakhs and the amount of such grant or loan is not less than seventy-five per cent of the total expenditure of that establishment, such establishment shall be deemed, for the purposes of this Act, to be substantially financed by the Central or State Government, as the case may be.

4. *Act to have overriding effect.*—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

CHAPTER II

COMPULSORY DEPOSIT OF ADDITIONAL EMOLUMENTS

5. *Additional Wages Deposit Account and Additional Dearness Allowance Deposit Account.*—(1) There shall be opened by such authorities as may be specified in the scheme two separate accounts, to be known, respectively, as the Additional Wages Deposit Account and the Additional Dearness Allowance Deposit Account, and different authorities may be specified for different establishments or different categories of employees or establishments.

(2) The specified authority shall, in relation to each Deposit Account, open a separate ledger account in the name of each employee in relation

to whom any contribution is made to the said Account, and credit the contributions so made in the said ledger account.

6. *Duty of employer or other person to make deductions of additional wages and additional dearness allowance from emoluments.*—(1) For the purposes of this Act, the deductions specified in sub-section (2) shall be made,—

(a) In the case of additional wages, for a period of one year from the appointed day; and

(b) in the case of additional dearness allowance, for a period of two years from the appointed day.

(2) On the commencement of this section,—

(a) every employer, who draws, from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly, and disburses, after the appointed day, emoluments of an employee to whom this Act applies, shall, as and when emoluments are disbursed by him for any period, deduct from he emoluments so disbursed, the whole of the additional wages and one-half of the additional dearness allowance and credit the amount so deducted, in accordance with the scheme, to the Additional Wages Deposit Account and the Additional Dearness Allowance Deposit Account, respectively;

(b) every other employer, who disburses, after the appointed day, emoluments to any employee to whom this Act applies, shall, as and when emoluments are disbursed by him for any period, deduct from the emoluments so disbursed, the whole of the additional wages and one-half of the additional dearness allowance, and shall remit, in accordance with the scheme, the amounts so deducted to the nominated authority and on receipt of such amounts the nominated authority shall credit the amounts so received to the Additional Wages Deposit Account and the Additional Dearness Allowance Deposit Account, respectively;

(c) any employee, to whom this Act applies, who draws, after the appointed day, his own emoluments shall,—

(i) if he is employed in an establishment owned or maintained by Government, make deductions from his salary bill in respect of the whole of the additional wages and one-half of the additional dearness allowance and the specified authority shall credit the amount so deducted, in accordance with the scheme, to the Additional Wages Deposit Account and the Additional Dearness Allowance Deposit Account, respectively;

(ii) if he is employed in any other establishment, remit the whole of the additional wages and one-half of the additional dearness allowance, in accordance with the scheme, to the nominated authority, and on receipt of such amount, the nominated authority shall credit the amount so received to the Additional Wages Deposit Account and the Additional Dearness Allowance Deposit Account, respectively.

Explanation.—In computing the amount to be credited to the Additional Wages Deposit Account and the Additional Dearness Allowance Deposit Account, the amount contributed in relation to such additional wages or additional dearness allowance shall not—

(a) to the extent of the contribution which is compulsorily required to be made to any provident or other fund under any law for the time being in force; or

(b) to the extent of the contribution made to any other provident fund, recognised under any other law for the time being in force, at a rate not exceeding the rate at which such contribution was being made immediately before the appointed day,

be taken into account.

(3) The specified authority shall, as soon as may be practicable after the end of each year, prepare separately, in relation to the amounts credited to the respective Deposit Accounts to the credit of each employee, and furnish to the employee a copy of the said accounts showing there in the amounts credited thereto in relation to the employee.

7. *Deposits to carry simple interest.*—(1) Every amount credited under section 6, in relation to an employee in a Deposit Account, shall carry simple interest at a rate, which shall be two and a half per cent over and above the bank deposit rate.

(2) The interest due on the amount credited in any Deposit Account shall be calculated in such manner as may be specified in the scheme.

(3) Interest accruing on amounts credited under section 6 to any Deposit Account shall enure to the benefit of the employees in relation to whom such amounts have been credited.

(4) For the purpose of the deductions under section 80L of the Income-tax Act, 1961, (43 of 1961) interest received on a deposit under this Act shall be deemed to be interest received on a deposit with a banking company to which the Banking Regulation Act, 1949, (10 of 1949) applies.

8. *Assessment for the purpose of income-tax.*—(1) For the purposes of computing, under the Income-tax Act, 1961 (43 of 1961), the total income of an employee, the amount credited to his ledger account in the Additional Wages Deposit Account or the Additional Dearness Allowance Deposit Account shall not be included in his total income of the previous year in which it is so credited; but so much of the amount as is repaid to him shall be liable to be included in his total income of the previous year in which it is repaid.

(2) For the purposes of computing, under the Income-tax Act, 1961 (43 of 1961), the total income of an employee, the amount repaid to him under this Act shall be deemed to be salary paid to him in arrears and the provisions of sub-section (1) of section 89 of that Act shall apply accordingly.

Explanation.—In this section, "previous year" and "total income" have the meanings respectively assigned to them in the Income-tax Act, 1961, (43 of 1961).

9. *Repayment of deposits.*—(1) Subject to the provisions of sub-section (2), every amount credited to the Deposit Accounts shall be repayable with interest due thereon,—

(*a*) in the case of an amount credited to the Additional Wages Deposit Account, at any time after the expiry of one year from the appointed day; and

(*b*) in the case of an amount credited to the Additional Dearness Allowance Deposit Account at any time after the expiry of two years from the appointed day:

Provided that nothing in this section shall prevent earlier repayment of any amount credited to either of the Deposit Accounts with interest due thereon in any case in which any person authorised by the Central Government in this behalf is satisfied that extreme hardship will be caused unless such repayment is made:

Provided further that an employee may, at his option, retain the whole or any part of the amount credited in relation to him in the Additional Wages Deposit Account or the Additional Dearness Allowance Deposit Account. or both, until his superannuation or until such date as may be specified by the Central Government in this behalf:

Provided also that the whole of the amount standing to the credit of an employee (not being an employee in a seasonal establishment) in either or both of the Deposit Accounts shall be repaid to him on his superannuation or resignation from office or on the termination of his employment.

(2) The aggregate amount credited to any Deposit Account by or in relation to an employee shall be repaid to the employee in five equal annual instalments commencing from the expiry of one year or two years, as the case may be, from the appointed day, together with interest due on the whole, or, as the case may be, part of the amount of compulsory deposit which remains unpaid.

10. *Power of Central Government to frame schemes.*—(1) The Central Government shall, by notification, frame one or more schemes in relation to the amounts credited to the Deposit Accounts under this Act.

(2) A scheme framed under sub-section (1) may provide for—

(*a*) the authorities by which the Additional Wages Deposit Account and the Additional Dearness Allowance Deposit Account shall be opened and maintained;

(*b*) the time and manner in which amounts deducted from additional wages or additional dearness allowance shall be deducted and credited to the respective Deposit Account;

(*c*) the documents to be issued to persons in relation to whom amounts have been credited to the Deposit Accounts as evidence of such credit;

(*d*) authority or authorities by or through which credits to the Deposit Accounts may be made;

(*e*) the accounts to be maintained with respect to the amounts credited to the Deposit Accounts and the officer by whom such Accounts shall be maintained;

(*f*) the nomination of persons to receive the amount standing in a Deposit Account to the credit of an employee in the event of his death, and cancellation or change of such nomination;

(*g*) the issue of duplicate of any document issued as evidence of any credit in the event of loss or destruction of the original and the fee, not exceeding rupees two, on the payment of which such duplicate may be issued;

(*h*) repayment of amounts credited to the Deposit Accounts with interest due thereon and the conditions, if any, under which such repayment may be made;

(*i*) any other matter which may be necessary or proper for the effective implementation of the scheme.

(3) A scheme framed under this section may provide that all or any of its provisions shall take effect, either prospectively or retrospectively, on such date, not being a date earlier than the appointed day, as may be specified in this behalf in the scheme and every scheme framed under this section shall have effect notwithstanding anything contained in any law (other than this Act) for the time being in force or in any instrument having effect by virtue of any enactment other than this Act.

(4) The Central Government may make a scheme to add to, amend or vary any scheme framed under sub-section (1).

11. *Rounding off.*—Where the amount of any credit to be made in any Deposit Account contains a part of a rupee, then, such part, if it is fifty paise or more, shall be increased to one complete rupee and if it is less than fifty paise, it shall be ignored.

CHAPTER III

Miscellaneous

12. *Amounts due to be first charge in the case of insolvency or liquidation of the employer.*—(1) Where any amount required by this Act to be credited to any Deposit Account or remitted to a nominated authority has not been so credited or remitted by any employer, the amount in respect of which such omission or failure was made, together with interest due thereon calculated

at the rate specified in sub-section (1) of section 7, shall, in the event of the employer being adjudicated by any court to be insolvent or, being a company is ordered by any court to be wound up, be deemed to be first charge on the assets of the insolvent or of the company, as the case may be, and shall have priority over all other debts and be paid in full.

(2) The court shall cause the sum which is required, under sub-section (1), to be paid in priority to all other debts to be remitted to the nominated authority for crediting the same to the appropriate Deposit Account.

13. *Transfer of establishments.*—Where an employer, in relation to an establishment to which this Act applies, transfers that establishment in whole or in part by sale, gift or otherwise or grants any licence in respect of such establishment, the employer and the person to whom the establishment is so transferred or the licence is so given shall be jointly and severally liable to credit to the appropriate Deposit Account or, as the case may be, remit to the nominated authority, the sums which are required by this Act to be so credited or remitted:

Provided that the liability of the transferee or licensee shall be limited to the value of the assets obtained by him on such transfer or licence, as the case may be.

14. *Penalties.*—(1) Whoever, with a view to—

(*a*) avoiding making any deduction of additional wages and additional dearness allowance and crediting the same to the Additional Wages Deposit Account or the Additional Dearness Allowance Deposit Account, as the case may be, or

(*b*) aiding or abetting any other person to avoid making any such deduction or credit,

knowingly makes, or causes to be made, any statement or representation which he knows to be false or does not believe to be true, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Any employer who omits or fails to credit to any Deposit Account or remit any amount to the nominated authority, as and when such credit or remittance becomes due under this Act or any scheme framed thereunder, shall be punished—

(*a*) with imprisonment for a term which shall not be less than three months but may extend—

(*i*) in the case of the first offence, to six months, and

(*ii*) in the case of any second or subsequent offence, to one year:

Provided that the court may, for any adequate and special reasons, to be recorded by it in the judgment, impose a sentence of imprisonment for a term lesser than three months or a fine in lieu of imprisonment; and

(*b*) also with fine which shall not be less than the amount which has not been credited to a Deposit Account or remitted to the nominated authority as required by this Act, and the interest due thereon, calculated at the rate specified in sub-section (1) of section 7, but may extend to twice the said amount and the interest due thereon, and out of the fine, if realised, the court trying the offence shall cause an amount equal to the amount which has not been credited to a Deposit Account or remitted to the nominated authority with interest due thereon, to be remitted to the nominated authority for crediting the same to the appropriate Deposit Account, and on such amount being remitted to the nominated authority, the liability of the employer shall, to the extent of the amount so remitted by the court, stand discharged.

(3) Whoever contravenes any provision of this Act or any scheme or order made thereunder for which no penalty has been separately provided for shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

15. *Offences by companies.*—(1) Where any offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manger, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(*a*) "company" means any body corporate and includes a firm or other association of individuals; and

(*b*) "director", in relation to a firm, means a partner in the firm, and, in relation to a Hindu undivided family, means the Karta of such family.

16. *Cognizance of offences.*—No court shall take cognizance of any offence punishable under this Act except upon a complaint made by the Central

Government or any officer or authority authorised in writing by the Central Government in this behalf.

17. *Power to exempt.*—Where the Central Government is of the opinion that it is necessary or expedient so to do either in the public interest or having regard to the peculiar circumstances of any case, it may, by notification, and subject to such conditions, if any, as it may specify in the notification,—

(*a*) exempt any establishment or category of employees working in any establishment from the operation of all or any of the provisions of this Act;

(*b*) exempt, in the case of extreme hardship to any employee, from crediting any amount in relation to such employee to the Additional Wages Deposit Account;

(*c*) empower deductions from additional wages in relation to an employee or class of employees, at a rate lesser than the rate specified in this Act.

18. *Power to delegate.*—The Central Government may, by notification, direct that any power which may be exercised by it under this Act or any scheme framed under this Act shall, subject to such restrictions and conditions, if any, as it may specify in the notification, be exercised also by—

(*a*) such officer or authority subordinate to the Central Government; or

(*b*) such State Government or such officer or authority subordinate to a State Government; or

(*c*) such other person or authority,

as may be specified in the notification:

Provided that the powers conferred by section 10 and section 21 shall not be delegated under this section.

19. *Protection against attachment.*—(1) The amount standing to the credit of any employee in any Deposit Account shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the employee.

(2) Any amount standing to the credit of an employee in any Deposit Account at the time of his death and payable to his nominee under the scheme shall vest in the nominee and shall be free from any debt or other liability incurred by the deceased or incurred by the nominee before the death of the employee.

20. *Power to call for returns and inspect accounts.*—(1) The nominated authority or any officer authorised by the nominated authority in this behalf may

call for such returns, as may be prescribed, from any employer to whom this Act applies.

(2) The books of account and other books and papers of any employer to whom this Act applies shall be open to inspection by the nominated authority or any person authorised by the Central Government in this behalf during business hours:

Provided that such inspection may be made without giving any previous notice to the employer or any officer of the employer.

(3) The nominated authority or any authorised officer may, during the course of inspection,—

(i) make, or cause to be made, copies of the books of account and other books and papers;

(ii) place, or cause to be placed, any marks of identification thereon in token of the inspection having been made.

(4) If after inspection the nominated authority or the authorised officer finds that any additional wages or additional dearness allowance has not been credited by the employer to the appropriate Deposit Account or, as the case may be, remitted to the nominated authority, it or he shall determine the amount in respect of which such credit or remittance has not been made:

Provided that no such determination shall be made except after giving to the employer a reasonable opportunity of being heard.

(5) It shall be the duty of every employer to whom this Act applies, to furnish to the nominated authority a copy of the award, decree or order of any court, tribunal or other authority or agreement or settlement relating to wage revision or revision of dearness allowance and also to produce such books of account and other books and papers as the nominated authority or the officer making the inspection may require.

(6) Where any revision of wages or dearness allowance is made otherwise than in pursuance of any award, decree or order of any court, tribunal or other authority or agreement or settlement, the employer shall give an intimation to the nominated authority about such revision of wages or dearness allowance and furnish to the nominated authority such books of account and other books and papers as that authority may require.

21. *Protection of action taken in good faith.*—No suit or other legal proceeding shall lie against the Central Government or any State Government or any officer authorised by the Central or State Government to discharge any functions under this Act, for any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any scheme framed thereunder.

22. *Persons performing functions under this Act to be public servants.*—Any person to whom any power of the Central Government is delegated under

section 18 or who is authorised to exercise any power specified in section 20 shall, if he is not a public servant, be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

23. *Recovery of arrears.*—Without prejudice to the provisions of section 14, any amount which ought to have been credited under this Act to a Deposit Account or remitted to the nominated authority but has not been so credited or remitted in accordance with the provisions of this Act or scheme or order made thereunder, shall be payable by the employer, together with interest due thereon calculated at twice the rate at which interest is payable under sub-section (1) of section 7, and in default of such payment, such amount, together with interest due thereon at the aforesaid rate, shall be recoverable as an arrear of land revenue:

Provided that where any such amount has been recovered by the court under sub-section (2) of section 14, the said amount shall not be recoverable under this section.

24. *Power to make rules.*—The Central Government may, by notification, make rules to carry out the provisions of this Act.

25. *Rules and schemes to be laid before Parliament.*—Every rule and every scheme made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or the scheme, or both Houses agree that the rule or scheme should not be made, the rule or scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or scheme.

26. *Power to remove difficulties.*—If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the appointed day.

27. *Repeal and saving.*—(1) The Additional Emoluments (Compulsory Deposit) Ordinance, 1974 (8 of 1974) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed (including any appointment, exemption nomination, direction or order made thereunder) shall be deemed to have been done or taken under the corresponding provisions of this Act; and

the repeal of the said Ordinance shall not affect any penalty or punishment incurred in respect of any offence committed against the said Ordinance or any investigation or legal proceeding in respect of such penalty or punishment and any such investigation or legal proceeding may be instituted or continued and any such penalty or punishment may be imposed as if section 12 and other provisions of the said Ordinance, necessary for the purposes aforesaid, had been included in this Act.

K. K. SUNDARAM,
Secretary to the Government of India.

©
Government of Kerala
1974

Reg. No. K. 107.

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XIX] Trivandrum, Saturday, 5th October 1974 / 13th Asvina 1896 [No. 698

SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 10565/LA4/74. *Dated, Trivandrum, 5th October, 1974.*

The Kerala Municipal Councils (Extension of Term of Office of Councillors) Bill, 1974 together with the Statement of Objects and Reasons and the Financial Memorandum is published, under Rule 67 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

Dr. R. PRASANNAN,
Secretary,
Legislative Assembly.

PRINTED AND PUBLISHED BY THE S.G.P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1974.

33/3131/MC.

Fourth Kerala Legislative Assembly
Bill No. 196

THE KERALA MUNICIPAL COUNCILS (EXTENSION OF TERM OF OFFICE OF COUNCILLORS) BILL, 1974

A

BILL

to provide for the extension of the term of office of the councillors of municipalities other than the Palai, Punalur, Chalakudy, Tirur and Malappuram Municipalities.

Preamble.—WHEREAS it is necessary to provide for the extension of the term of office of the councillors of all the municipalities other than the Palai, Punalur, Chalakudy, Tirur and Malappuram Municipalities;

BE it enacted in the Twenty-fifth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Municipal Councils (Extension of Term of Office of Councillors) Act, 1974.

(2) It shall be deemed to have come into force on the 27th day of May, 1974.

2. *Extension of the term of office of municipal councillors.*—Notwithstanding anything contained in the Kerala Municipalities Act, 1960 (14 of 1961), the term of office of the councillors of all the municipalities constituted under the said Act, other than the Palai, Punalur, Chalakudy, Tirur and Malappuram Municipalities, which expires on the first day of June, 1974, shall extend upto noon on the first day of January, 1975.

3. *Repeal and saving.*—(1) The Kerala Municipal Councils (Extension of Term of Office of Councillors) Ordinance, 1974 (4 of 1974), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.

STATEMENT OF OBJECTS AND REASONS

The term of office of the Councillors of all the Municipalities other than the Palai, Punalur, Chalakudy, Tirur and Malappuram Municipalities was due to expire on the 1st day of June, 1974

The revision petitions filed against the delimitation of wards of the Municipalities had not been finally disposed of and therefore election could not be conducted before the expiry of the term of the municipal councils. Hence the term of office of the present councillors had to be extended for a further period of seven months from the noon of the 1st day of June, 1974. Since the Legislative Assembly was not in session, the Kerala Municipal Councils (Extension of Term of Office of Councillors) Ordinance, 1974 (Ordinance No. 4 of 1974) was promulgated by the Governor on the 26th day of May, 1974. The Bill seeks to replace the Ordinance by an Act of the Legislature.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any expenditure from the Consolidated Fund of the State.

K. AVUKADERKUTTY NAHA.